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IN THE

Supreme Court of the United States

NO. 746

OCTOBER TERM, 1959

CHARLES S. HELMIG, Petitioner,

v.

CHARLES ALVIN JONES, JOHN C. BELL, JR., MICHAEL A. MUSMANNO, JOHN C. ARNOLD, BENJAMIN R. JONES, HERBERT B. COHEN, THOMAS M. MARSHALL, SARA M. SOFFEL, and HENRY ELLENBOGEN, individually and jointly as members of the Judiciary of the Commonwealth of Pennsylvania, Respondents.

PETITION FOR REHEARING

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PAUL GINSBURG
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PETITION FOR REHEARING

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition for rehearing of Charles S. Helmig respectfully represents:

First: On April 18, 1960, this Honorable Court entered an Order denying his unopposed petition for writ of certiorari in the above captioned action.

Second: In the District Court the entire Record consisted only of the Complaint, Notice of Taking Depositions, Motion to Dismiss the Complaint, Motion to Vacate Notice of Taking Depositions and to Enter Order that Defendants' Depositions Not Be Taken, Plaintiff's Answer to Motion to Vacate Notice of Taking Depositions and to Enter Order that Defendants' Depositions Not Be Taken, Plaintiff's Motion for Change of Venue, and District Judge Sorg's Order (unaccompanied by an Opinion) granting defendants' motions to dismiss plain-

tiff's complaint and to vacate plaintiff's notice of taking depositions, and denying plaintiff's motion for change of venue.

Third: The Complaint alleges (4a) "Jurisdiction is based upon the Constitution of the United States, particularly the Fourteenth Amendment thereto; the Civil Rights Acts, particularly the Act of April 20, 1871, c. 22, Sec. 1, 17 Stat. 13, Sec. 1893 of Title 42 U.S.C., now R. S. sec. 1979; and an amount in excess of $3,000.00, exclusive of interest and costs."

Fourth: The Complaint also alleges (6a) "The rights of which the defendants have deprived the plaintiff include, but are not limited to, his right to work and to earn a livelihood in his chosen occupation; his right to be compensated for work done and services rendered in his occupation and business; his right to litigate with due process of law to obtain protection and enforcement of the said rights; his right to a hearing before the taking of his property, so that he can defend, protect and enforce his rights; his right to an orderly proceeding adapted to the nature of the case and in accordance with law, in which he can protect his rights to his good name, fame and business; his right to an expectancy of continued employment".

Fifth: The entire Complaint (3a-7a) beyond question fully complies with Rule 8(a) of the Federal Rules of Civil Procedure, providing for Notice Pleadings.

Sixth: It is elementary that, as a rule, the plaintiff is entitled to take the defendants' depositions, as noticed.

Seventh: It is likewise elementary that on a Motion to Dismiss, all allegations of the Complaint must be taken as admitted to be true and all inferences there-

from must be construed most favorably towards the plaintiff's case.

Eighth: It necessarily follows for purposes herein that the respondents did deprive your petitioner of his federal constitutional and civil rights, as hereinabove set forth; and it is shown in the Petition authoritatively (8-9) that your petitioner does have those federal constitutional and civil rights as alleged.

Ninth: The failure of the Court of Appeals to accompany its affirmance with a legal Opinion not only is violative of the Canons of Judicial Ethics (Petition, 9) but also sets, or even continues, a dangerous precedent which calls for the exercise of this Honorable Court's powers of supervision.

Tenth: Under the circumstances, the denial of certiorari herein could lead to only one logical conclusion,—that the United States Courts will not protect and enforce the federal constitutional and civil rights as sought by your petitioner, in the face of the authorities cited (Petition, 10) which resolve any doubt about respondents' lack of immunity.

Eleventh: The refusal of the United States Courts, discriminatorily, to protect and enforce such federal constitutional and civil rights not only enters a conflict with the Law of the Land, but also gives credence to the popular misconception that the only federal constitutional and civil rights which are entitled to the protection of and enforcement by the United States Courts are the right to vote and the right to attend an integrated school. In other words the United States Courts will afford such protection and enforcement only for some Negroes in some Southern States. This discriminatory protection and enforcement affords little comfort

and no relief to your petitioner who is a Northern White Protestant.

Twelfth: Your petitioner respectfully advocates the full and complete protection and enforcement, without discrimination, of all federal constitutional and civil rights for all citizens regardless of race, color and creed; for that is the only real, sound basis of freedom in any Republic. The provisions for such equality and freedon are already in our Constitution and Civil Rights Acts. What the citizens, including your petitioner, sorely need are the equal protection and indiscriminate enforcement thereof. Your Honorable Court is able to accomplish this; and it assumed that it is ready and willing to do so. Therefore, it will reverse the judgment sought to be reviewed herein.

Thirteenth: This case is of such public importance as to persuade this Honorable Court to exercise its sound judicial discretion to review on writ of certiorari.

Wherefore, your petitioner prays that this Honorable Court will grant this petition for rehearing.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition For Rehearing is presented in good faith and not for delay; and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.